

(i) A significant idling of production facilities in the industry, including data indicating plant closings or the underutilization of production capacity;

(ii) The inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit; and

(iii) Significant unemployment or underemployment within the industry; and/or

(2) With respect to the threat of serious injury, data relating to:

(i) A decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, productivity, or employment (or increasing underemployment);

(ii) The extent to which firms in the industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development;

(iii) The extent to which the U.S. market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

(3) Changes in the level of prices, production, and productivity.

(f) *Cause of injury.* An enumeration and description of the causes believed to be resulting in the injury, or threat thereof, described under paragraph (e) of this section, and a statement regarding the extent to which increased imports, either actual or relative to domestic production, of the imported article are believed to be such a cause, supported by pertinent data;

(g) *Relief sought and purpose thereof.* A statement describing the import relief sought, including the type, amount, and duration, and the specific purposes therefor, which may include facilitating the orderly transfer of resources to more productive pursuits, enhancing competitiveness, or other means of adjustment to new conditions of competition;

(h) *Efforts to compete.* A statement on the efforts being taken, or planned to be taken, or both, by firms and workers in the industry to make a positive adjustment to import competition.

(i) *Imports from NAFTA countries.* Quantitative data indicating the share of imports accounted for by imports from each NAFTA country (Canada and Mexico), and petitioner's view on the extent to which imports from such NAFTA country or countries are contributing importantly to the serious injury, or threat thereof, caused by total imports of such article.

(j) *Critical circumstances.* If the petition alleges the existence of critical circumstances, a statement setting forth the basis for the belief that there is clear evidence that increased imports (either actual or relative to domestic production) of the article are a substantial cause of serious injury, or the threat thereof, to the domestic industry, and that delay in taking action would cause damage to that industry that would be difficult to repair, and a statement concerning the provisional relief requested and the basis therefor.

§ 206.15 Institution of investigation.

(a) *In general.* Except as provided in paragraph (b) of this section, the Commission, after receipt of a petition under this Subpart B, properly filed, will promptly institute an appropriate investigation and will cause a notice thereof to be published in the FEDERAL REGISTER.

(b) *Exceptions—(1) Reinvestigation within one (1) year.* Except for good cause determined by the Commission to exist, no new investigation will be made under section 202 of the Trade Act with respect to the same subject matter as a previous investigation under section 202 unless one (1) year has elapsed since the Commission made its report to the President of the results of such previous investigation.

(2) *Articles subject to prior action.* No new investigation will be made under section 202 of the Trade Act with respect to an article that is or has been the subject of an action under section 203(a) (3)(A), (B), (C), or (E) of the Trade Act if the last day on which the

President could take action under section 203 of the Trade Act in the new investigation is a date earlier than that permitted under section 203(e)(7) of the Trade Act.

(3) *Articles subject to the Textiles Agreement.* No investigation will be made under section 202 of the Trade Act with respect to an article that is the subject of the WTO Agreement on Textiles and Clothing unless the United States has integrated the article into GATT 1994 and the Secretary of Commerce has published notice to such effect in the FEDERAL REGISTER.

(4) *Perishable agricultural product.* An entity of the type described in §206.13 that represents a domestic industry producing a perishable agricultural product may petition for provisional relief with respect to such product only if such product has been subject to monitoring by the Commission for not less than 90 days as of the date the allegation of injury is included in the petition.

§206.16 Industry adjustment plan and commitments.

(a) *Adjustment plan.* A petitioner may submit to the Commission, either with the petition or at any time within 120 days after the date of filing of the petition, a plan to facilitate positive adjustment to import competition.

(b) *Commitments.* If the Commission makes an affirmative injury determination, any firm in the domestic industry, certified or recognized union or group of workers in the domestic industry, local community, trade association representing the domestic industry, or any other person or group of persons may, individually, submit to the Commission commitments regarding actions such persons and entities intend to take to facilitate positive adjustment to import competition.

§206.17 Limited disclosure of certain confidential business information under administrative protective order.

(a)(1) *Disclosure.* Upon receipt of a timely application filed by an authorized applicant, as defined in paragraph (a)(3) of this section, which describes in general terms the information requested, and sets forth the reasons for

the request (*e.g.*, all confidential business information properly disclosed pursuant to this section for the purpose of representing an interested party in investigations pending before the Commission), the Secretary shall make available all confidential business information contained in Commission memoranda and reports and in written submissions filed with the Commission at any time during the investigation (except privileged information, classified information, and specific information of a type which there is a clear and compelling need to withhold from disclosure, *e.g.*, trade secrets) to the authorized applicant under an administrative protective order described in paragraph (b) of this section. The term “confidential business information” is defined in §201.6 of this chapter.

(2) *Application.* An application under paragraph (a)(1) of this section must be made by an authorized applicant on a form adopted by the Secretary or a photocopy thereof. An application on behalf of an authorized applicant must be made no later than the time that entries of appearance are due pursuant to §201.11 of this chapter. In the event that two or more authorized applicants represent one interested party who is a party to the investigation, the authorized applicants must select one of their number to be lead authorized applicant. The lead authorized applicant’s application must be filed no later than the time that entries of appearance are due. Provided that the application is accepted, the lead authorized applicant shall be served with confidential business information pursuant to paragraph (f) of this section. The other authorized applicants representing the same party may file their applications after the deadline for entries of appearance but at least five (5) days before the deadline for filing posthearing briefs in the investigation, and shall not be served with confidential business information.

(3) *Authorized applicant.* (i) Only an authorized applicant may file an application under this subsection. An authorized applicant is:

(A) An attorney for an interested party which is a party to the investigation;